Editor's note: 80 I.D. 531

HARRY AND MARJORY GRABBERT, Appellants

ROBERT W. SCHULTZ, Appellee

IBLA 72-414 Decided July 24, 1973

Appeal from a decision (Worland 44) by the District Manager, Worland, Wyoming, Bureau of Land Management, dated April 6, 1972, denying the appellants' grazing lease application and granting the appellee's grazing application to the extent of the conflict between the two applications.

Reversed.

Administrative Practice -- Grazing Leases: Preference Right Applicants

An applicant who asserts a preference to receive a grazing lease under section 15 of the Taylor Act must have grazing rights in excess of 50% on the cornering or contiguous land, and where his rights are merely permissive and are subject to revocation at any time at the will of the owner(s), no preference will be recognized.

APPEARANCES: Harry and Marjory Grabbert, pro se; Richard W. Ferry of McCarty and Ferry, Cody, Wyoming, for appellee.

OPINION BY MR. STUEBING

Harry and Marjory Grabbert have appealed from an April 6, 1972, decision of the Worland, Wyoming, District Office which decided that as between them and a conflicting applicant to a portion of a grazing lease, Worland 44, the conflicting applicant would be awarded the disputed land.

In December 1971 Harry and Marjory Grabbert filed an application to renew their lease, Worland 44, which they had held since 1954 but which would expire on January 31, 1972. Robert W. Schultz filed a conflicting /application. The District Office found them both to be qualified preference applicants under 43 CFR 4121.1-1. After it was determined that there could be no agreement between the parties as to a division of the land, it was decided that an award would be made pursuant to certain criteria contained in 43 CFR 4121.2-1(d)(1) and (2); that is, historical use, proper use of the preference lands, and general needs of the applicants. The decision found that other criteria specified in the regulations were either not applicable in the instant case or that both applicants were equally qualified as to these factors.

The decision held that Schultz better deserved the lease from the standpoint of land pattern, proper use of preference land, and general need. It held that the historical use of the Grabberts was insufficient to overcome those considerations, and it awarded the conflict area to Schultz.

After the Grabberts filed their notice of appeal and statement of reasons on May 4, 1972, the situation of the parties in relation to the preference land involved in this appeal changed. In their original statement of reasons the Grabberts attacked the District Office's decision for its effect on their ranching operations and they included allegations of Schultz's misuse of his grazing privileges and a discussion of his insincerity as a stable rancher. To those charges Schultz filed an answer and the Worland District Office sent a review of the case refuting the Grabberts' appeal. Because of the District Office's action we allowed both parties an opportunity to respond to the material contained in the District Office's review. All prior documents had relied, in their discussions of the situation, upon Schultz's control of the leased land which he had listed in his application as preference land. However, the Grabberts included with their answer to the District Office's review, a letter from Marathon Oil Company, the partial owner of the land which Schultz used as his preference land, which revoked the grazing privileges on that land which Marathon had granted to Schultz. By a second letter-agreement Marathon awarded those same grazing privileges to Grabbert.

The Wyoming State Director forwarded to this Board a memorandum which explains the ownership situation regarding the land which Schultz had used as his preference land:

> These two quarter-sections are part of a group of oil placer claims patented in 1921. The corporation to which the patent was issued was later dissolved and ownership of the land was distributed to the stockholders and directors in proportion to their holdings. In the intervening years, every portion of the distributed ownership has been through at least one transaction, ranging from mortgage collateral to probative wills. At present there are thirty-four owners of record holding 95 3/4% of the ownership. The Park County records are not complete in that at least one bequest dividing ownership of a share is not fully recorded. This serves to illustrate the complexity of the situation when we set out to determine the status of preference of land listed in the Schultz application. At that time, the situation was as follows:
>
> Schultz leased from:
>
> | | |
> |---|---|
> | Marathon Oil Company | 29.2277743% |
> | Helen and Robert Ehrlich | 16.9088818% |
> | Ehrlico, a corporation | 16.8899469% |
> | Schultz owned | 4.3707041% |
> | Total | 67.3973071% control |
>
> We have talked to Mr. W. C. Silvester, land man for Marathon Oil Company, and the Marathon lease to Schultz has been canceled and reissued to Grabbert. The present situation is as follows:
>
> Schultz leases:
>
> | | |
> |---|---|
> | Helen and Robert Ehrlich | 16.9088818% |
> | Ehrlico, a corporation | 16.8899469% |
> | Schultz owns | 4.3707041% |
> | Total | 38.1695328% |

Grabbert leases:

Marathon Oil Company	29.2277743%

Accordingly, the primary question to resolved is whether, in the light of existing circumstances, Schultz still can be treated as standing on a equal plane of preference with the Grabberts. That is, do Schultz's total undivided interests of less than 39% invest him with "control" of the base land within the context of 43 U.S.C. §315(m) (1970)? We think not.

The outstanding interests, amounting to 61.8304671% could be consolidated to create an interest larger than that held by Schultz. It further appears that the appellants are engaged in an attempt to attain a majority interest in the grazing privileges on the land offered by Schultz as base. In addition to the interest which Marathon Oil Company has transferred from Schultz to the Grabberts, the Grabberts have recently submitted letter agreements whereby several other purported owners of undivided fractional interests in Schultz's base land have given their permission to graze that land to the Grabberts. The extent of the interest held by these owners is not given. The appellants advise that they are securing similar permissions from other owners of fractional interests.

We regard the acquisition and extent of grazing privileges by the Grabberts on Schultz's base land as immaterial, except to demonstrate that one who does not have an undivided interest in excess of

50% of the alleged preference land may not be said to "control" that land within the meaning and intent of the statute.

Moreover, where the grazier whose grazing privileges on a given tract are merely permissive, so that he is a tenant at will, he may not be said to control the land, because "he hath no certain nor sure estate, for the lessor may put him out at what time it pleaseth him." Black's Law Dictionary 1635 (4th ed. 1951). This apparently was the relationship of Schultz with respect to the interest owned by Marathon Oil Company. It is therefore our opinion that Schultz never had sufficient interest and tenure in the land to control it, and certainly not since he lost the 29+% interest withdrawn by Marathon.

With reference to land, the courts have held that, in general, to have "control" of a place is to have the authority to manage, direct, superintend, restrict, or regulate. "Control" does not import absolute or even qualified ownership, but means the power or authority to direct, govern, administer, or oversee. The word applied to real property implies possession. See cases collected in 9A Words and Phrases (1960).

The word "control" has no legal or technical meaning, and, where used in a statute, must be given such an interpretation as the

legislature intended it to have, to be ascertained from the connection in which it is used, the Act in which it is found, and the legislation of which it forms a part. Gulf Refining Co. v. Fox, 11 F. Supp. 425, 430 (D. W.Va. 1935). Although the word is not used in the statute, it is used in the implementing regulation, infra.

The Taylor Grazing Act, supra, provides in its preamble that among its purposes are to provide for the orderly use of public grazing land and to stabilize the livestock industry. In pursuit of these objectives the Act provides mandatory preference for those applicants who are owners, homesteaders, lessees, or other lawful occupants of contiguous or cornering lands. To hold that this preference extends to occupants who are without tenure or hold only minor fractional interests, whose privileges can be terminated at any time without notice, would be to frustrate the intent of the law to achieve order and stability.

Schultz does not control the land on which he bases his claim of preference, and one who does not control his preference land can not be considered "a lawful occupant of contiguous land," as that term is used in 43 U.S.C. §315(m) (1970). Laurence A. Andren, 7 IBLA 14 (1972), and cases cited therein.

43 CFR 4125.1-1(i)(4) requires:

> The grazing lease will be terminated in whole or in part because of loss of control by the lessee of non-

Federal lands that have been recognized as the basis for a grazing lease.

As between conflicting applicants for a section 15 lease, if only one of the applicants owns adjoining land, an award must be made to him if he needs the public land for proper use of his contiguous land, even though the applicant who does not own contiguous land may have a greater need for the public land. E. W. Davis, A-29889 (March 25, 1964).

Because Schultz does not control his preference land and in light of the requirements of the regulation set out above, we hold that the lease must be awarded to the Grabberts, who are the only remaining preference applicants for the disputed area.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is reversed.

Edward W. Stuebing, Member

We concur:

Douglas E. Henriques, Member

Frederick Fishman, Member